

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 150 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JUNAGADH NAGAR PALIKA

Versus

THAKKER & COMPANY

Appearance:

MR PM RAVAL for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. Respondent was the original plaintiff who
preferred Regular Civil Suit No. 122 of 1975 in the
court of Civil Judge (Senior Division) at Junagadh

against the present appellant claiming refund of octroi totalling to Rs. 1,300/-.The trial court dismissed the suit. The plaintiff-respondent approached the District Court, Junagadh with Regular Civil Appeal No. 48 of 1977 which came to be allowed vide judgment dated 5.2.1981 by the learned Assistant Judge, Junagadh. Aggrieved by the said judgment and decree, original defendant Junagadh Nagar Palika has preferred this second appeal. While admitting this appeal, following questions were formulated by this Court:

- (1) Whether a suit filed by a person other than importor for refund of the court fee is maintainable when the receipt is endorsed in favour of self by the consignor?
- (2) Whether to attract the levy of octroi it is necessary that not only the sale should be within the octroi limits of the Municipality but their assumption or use also should be within the octroi limits of the Municipality /
- (3) What is the true and correct interpretation of the words brought within the Municipal limits for use, consumption or sale.

2. The facts of the case in a narrow compass are that according to the plaintiff, it is a registered partnership firm and is engaged in the business of chemists and druggists at Junagadh. The plaintiff firm is an accredited whole-seller of a company known as Smith Kline and French (India) Ltd., Bangalore ('SKF'). During S. Y. 2030, SKF had sent goods to Junagadh. Said goods were consigned to 'Self' from Bangalore and according to the plaintiff, goods belonged to SKF. Goods were not imported by the plaintiff. According to the plaintiff, it was agent of SKF and, therefore, at the time of entry of the goods, on different dates, amount of Rs.1,300/-, in all, was deposited at the octroi post. Thereafter, goods were exported outside the limits of Junagadh municipality and export certificate was obtained. The plaintiff, therefore, asserted that the defendant-appellant must refund the amount of octroi paid by the plaintiff earlier. Reliance is placed on relevant rules for the purpose. However, the municipality refused to refund the amount to the plaintiff on the ground that the plaintiff was not importer and since after import, the ownership had changed, the plaintiff was not entitled to any amount of refund. The plaintiff, therefore, served

a statutory notice and thereafter instituted a suit.

3. The case of the defendant-appellant in the written statement is that the plaintiff had no cause of action and, therefore, the suit is not maintainable. The defendant denied that the plaintiff had a right to claim refund. It was contended that even according to the plaintiff, the plaintiff is not importer and that the documents relating to the goods were received through bank and, therefore, according to the defendant, the plaintiff became owner of the goods which were consigned to self by SKF. It was contended that there is change of ownership after entry of the goods and the plaintiff, suppressing this fact, had shown SKF to be exporter of the said goods. It was alleged that this was so done only with a view to claim refund because refund can be claimed only if SKF exports the goods. It was contended further in the written statement that all invoices are in the name of manufacturer i.e. SKF and that after the plaintiff has taken delivery of the documents, the goods were exported. It was, therefore, denied that the plaintiff had a right to claim refund of the said amount.

4. The trial court framed the following issues:

- (1) Whether the plaintiff has a right to bring this suit ?>
- (2) Whether the plaintiff proves that it is a duly registered partnership firm ?
- (3) Whether the plaintiff proves that it has taken delivery of the goods in question as the agent of this Smith Kline and Co. as alleged ?
- (4) Whether the plaintiff is entitled to claim refund of Rs.1300/- as alleged ?
- (5) What order and decree ?

5. The issues were answered as under by the trial court:

- (1) In the negative.
- (2) In the affirmative.
- (3) In the negative.

(4) In the negative.

(5) As per order passed below.

6. The trial court ultimately dismissed the plaintiff's suit mainly on the ground that the plaintiff had no right to bring the suit and that the plaintiff failed to prove that it had taken delivery of the goods in question as an agent of SKF.

7. In the appeal, the appellate court framed the following points for determination:

(1) Whether the trial court erred in finding that the appellant/plaintiff has no right to bring the suit ?

(2) Whether the appellant/ plaintiff is entitled to relief of amount ?

(3) What final order ?

8. The appellate court gave the following findings :

(1) In the affirmative.

(2) In the affirmative

(3) As per the final order.

9. It was found by the first appellate court that the trial court had committed an error in holding that the plaintiff had no right to bring the suit and that the plaintiff is entitled to the refund of the amount. In arriving at this conclusion, the first appellate court dealt with certain provisions of Sale of Goods Act and decisions of the Supreme court and the Mahdya Pradesh High Court. The first appellate court, therefore, ultimately allowed the appeal and decreed the plaintiff's suit quashing and setting aside the judgment and decree passed by the trial court.

10. The defendant municipality has approached this court with this second appeal under Section 100 of the Code of Civil Procedure. The main contentions raised before this court are that according to the plaintiff, it was not importer. However, the goods were shown to have been exported by SKF, the manufacturer and importer.

There is nothing on record to indicate that the plaintiff is the agent of SKF and, therefore, the suit could not have been brought by the plaintiff. It is also contended that if the nature of transaction is seen, the goods were despatched by SKF from Bangalore to Junagadh in favour of self. Goods were delivered to the plaintiff only after it paid the price therefor and got the documents cleared from the bank, meaning thereby that the transaction of sale to the plaintiff by SKF was complete upon payment of money by the plaintiff to the bank whereby documents were released by the bank. The property in goods therefore passed on to the plaintiff only at that point of time, meaning thereby, that sale was complete and it took place within the area of Junagadh municipality and, therefore, the goods were liable to be levied with octroi. If the goods are exported thereafter, there is no question of any refund. Another contention is that according to the rules, refund can be claimed only after goods are exported after being imported and for that purpose, certain declaration in stipulated form is required to be made at the time of importing goods and no such declaration has been made by the plaintiff and, therefore, there is no question of any refund which can be claimed by the plaintiff.

11. Mr. Harin Raval, learned advocate for the appellant has reiterated the above grounds during the course of his arguments. He has taken this court through the evidence. He has drawn attention of this court to the Octroi Rules framed by the Junagadh Municipality under section 99 (1) (4) read with section 271(L) and 275(1) of the Gujarat Municipalities Act, 1963. He has drawn attention of this court to certain provisions of Sale of Goods Act and submitted that under these provisions, the property in goods passed only upon the plaintiff making payment to the bank and getting the documents cleared. Therefore, he submitted that sale has taken place within the area of municipality and, therefore, goods are liable to be levied with octroi and there is no question of any refund to its exporter. He has drawn attention of this court to the deposition of the plaintiff Pranalal Jamnadas at Exh. 46, wherein it is admitted that documents of goods imported are received through bank. Bank released the documents upon payment being made to the bank, whereafter, on the basis of those documents, delivery is given by the transport operator. After the goods are received, the plaintiff acknowledged receipt by writing a letter to the company. Once delivery is taken, there is no responsibility of the company (i.e. SKF). Mr. Raval, therefore, contended that this clearly indicates that the property in goods would pass

to the plaintiff only upon his taking delivery and getting the documents cleared. Till then, responsibility of the goods remains with the vendor SKF, so also the title. Mr. Raval has also drawn attention of this court to re-examination of the plaintiff wherein it is stated by him that octroi deposit is paid by the plaintiff on behalf of SKF. Mr. Raval submitted that this supports the case of the appellant that importer was SKF and not the plaintiff. The plaintiff had deposited the amount only on behalf of SKF as an agent and the plaintiff, therefore, could not have claimed the refund.

12. The respondent has been served, but has chosen not to contest this appeal and the matter is, therefore, decided in the absence of the respondent.

13. The main question which this court is required to consider for deciding the appeal would be whether the plaintiff could have claimed refund of octroi. In this regard, it may be noted at the outset that the trial court came to the conclusion that the plaintiff is not entitled to sue for refund of octroi. For coming to this conclusion, the trial court relied on the averments made in the plaint to the effect that the plaintiff was not the importer. However, the plaintiff claimed that he being the agent of the importer, was entitled to claim refund. The first appellate court accepted this version. While accepting this version, the first appellate court observed that under section 23 of the Sale of Goods Act, the transporter would become agent of the importer once the goods are delivered to by the manufacturer. Octroi paid by the transporter was, therefore, on behalf of the importer and, therefore, importer was entitled to claim refund.

14. It appears that the first appellate court ran into error of not considering the fact that according to the plaintiff, he was not the importer. He was only an agent. This fact gets support from the fact that invoices are in the name of manufacturer viz. SKF. Goods were despatched to 'Self'. Now, if deposition of the plaintiff is seen, it appears that the documents were sent by SKF through bank and upon his making payment to the bank, documents were released by the bank whereafter he got delivery of the goods in question. The position, therefore, would be that goods were imported by SKF. It remained property of SKF. Transaction was complete only upon the plaintiff making payment to the bank and the bank releasing the documents in favour of the plaintiff whereafter the plaintiff got possession of the goods in question. The position, therefore, would be that property

in goods would pass on to the plaintiff only after he makes payment and/or receives delivery. It cannot, therefore, be said that the plaintiff was acting as agent when he imported the goods, because there is no document to indicate this aspect. The plaintiff asserted that he never was an importer and this assertion finds support from the evidence as discussed above. If the plaintiff was not an importer and if he became the owner only after goods were imported and documents were delivered by the bank on his making payment, then his case of his being agent cannot be accepted. In support of this version of the plaintiff, he has not produced any oral or documentary evidence, cogent in nature. There is nothing to indicate that the transport operator had deposited money on behalf of the plaintiff.

15. The first appellate court relied on the contention raised in the written statement of the defendant-appellant that goods were imported by SKF and thereafter, ownership has changed and, therefore, the plaintiff has obtained export certificate by suppressing this fact. The first appellate court has observed that title has changed and, therefore, the plaintiff is entitled to file the suit. Here again, it ought to have been considered that if the importer was SKF when the goods came within the limits of the municipality, SKF was liable to pay octroi and if SKF exports, then SKF can claim refund. Here, sale is complete at the time when the plaintiff makes payment to the bank and upon delivery of the goods from the transporter i.e. after the goods are imported by SKF and therefore, the goods would be liable to be charged with octroi. If subsequently, the plaintiff has exported the goods, the plaintiff cannot claim benefit of refund because the transaction of sale of imported goods has taken place within the area of the municipality and the goods, therefore, would be subject to levy of octroi as per the rules.

16. The aspect of change of property in goods is made clear by the evidence of plaintiff Pravinbhai, Exh.46 that after payment of money to the bank and obtaining documents, delivery of the goods is obtained from the transport operator. Once delivery is obtained, SKF will be free from any responsibility, meaning thereby, if there is damage prior thereto to the goods, it would be the concern of SKF. Putting differently, before delivery is made, title of the property in goods remains with SKF. This is clear indication that transaction is complete after the goods are delivered within municipal limit by SKF. This is also clear from the fact that during re-examination, the plaintiff states that the amount

deposited is on behalf of the company- SKF. This aspect seems to have been overlooked by the first appellate court.

17. The very nature of the transaction is such that it cannot be said that the transport operator acted as agent of the plaintiff or that ,therefore, the octroi was paid on behalf of the plaintiff. Reliance placed by the first Appellate Court on the decisions and provisions of Section 23 was, therefore, an error.

18. Mr.Raval has drawn attention of this court to the octroi rules framed by the Junagadh Municipality under section 99 (1) (4) read with sections 271 (L) and 275 (L) of the Gujarat Municipalities Act, known as Octroi Rules with Schedules of the Junagadh Municipality,wherein it is provided that if importer of the goods intends to export the same, he has to give a declaration in stipulated form before the Naka Clerk at the time of import. Relevant provision runs as under :

"9.Method of refund:

x x x

2. Declaration and custody of goods:

a. Except in case of the goods in transit, every importer of goods who intends to export the same, shall give declaration in the hereto annexed form of schedule (c) and (e) as the case may be,before the Naka Clerk at the time of import."

19. Outcome is that the plaintiff has not been able to indicate anything that he was acting as agent of SKF. The plaintiff was not the importer. SKF was not exporter and as observed above, the property in goods passed after import of the goods on completion of transaction by sale by SKF to plaintiff by making of payment by the plaintiff to the bank, his obtaining documents and obtaining delivery of goods from the transport operator. The goods were,therefore, imported for sale and liable to octroi. In other words, transaction of sale took place after import of goods between SKF and the plaintiff and,therefore, octroi was leviable on the goods imported by SKF and title having been changed before export, there was no question of any refund.

20. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The judgment and

decree of the learned Assistant Judge, Junagadh in Regular Civil Appeal No. 48 of 1977 is quashed and set aside and Civil Suit No. 122 of 1975 filed by the plaintiff is dismissed. No costs.

(A.L. Dave,J.)

parekh